

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY,

Plaintiffs,

v.

MICROSOFT CORPORATION, et al.,

Defendants.

Case No. 1:23-CV-11195-SHS

**DEFENDANT MICROSOFT CORPORATION'S RESPONSE TO PLAINTIFF'S  
MOTION FOR LEAVE TO FILE UNDER SEAL**

Pursuant to Paragraph 22 of the Protective Order (ECF No. 127), Defendant Microsoft Corporation responds to Plaintiff The New York Times Company's ("NYT") Motion for Leave to File Under Seal (ECF No. 227) filed in connection with NYT's letter motion to compel ("Letter Motion") (ECF No. 228). For the reasons stated below, Microsoft respectfully requests the Court grant Plaintiff's motion for leave to file under seal.

Although "[t]he common law right of public access to judicial documents is firmly rooted in our nation's history," this right is not absolute and courts "must balance competing considerations against" the presumption of access." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006). "The proponent of sealing 'must demonstrat[e] that closure is essential to preserve higher values and is narrowly tailored to serve that interest.'" *Bernstein v. Bernstein Litowitz Berger & Grossman LLP*, 814 F.3d 132, 144 (2d Cir. 2016) (quoting *In re N.Y. Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987)). "[T]he presumption of public access in filings submitted in connection with discovery disputes . . . is generally somewhat lower than the presumption applied to material introduced at trial, or in connection with dispositive motions . . . ." *Brown v. Maxwell*, 929 F.3d 41, 50 (2d Cir. 2019). "[W]hile a court must still articulate specific

and substantial reasons for sealing such material, the reasons usually need not be as compelling as those required to seal summary judgment filings.” *Id.*

NYT’s Letter Motion contains quotations from and descriptions of a highly confidential document, the disclosure of which would unfairly prejudice Microsoft. Specifically, portions of the last sentence of Section 2.f of the Letter Motion quotes from Exhibit 9 thereto. Exhibit 9, which was marked “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the Protective Order that was entered in this case (ECF No. 127), contains highly confidential information about ongoing work between OpenAI and Microsoft, as well as other Microsoft proprietary information. *See* Ex. A (Declaration of Lucky Vidmar). Microsoft requests that this sentence be redacted and sealed from the public and that Exhibit 9 be sealed in its entirety.

The information contained in Exhibit 9 and quoted and described in NYT’s Letter Motion is the type of information commonly found to warrant sealing. *See Regeneron Pharms., Inc. v. Novartis Pharma AG*, No. 1:20-CV-05502, 2021 WL 243943 (S.D.N.Y. Jan. 25, 2021) (finding that requested redactions were “narrowly tailored to protect competitive business information, including the non-public terms of [various agreements]” and concluding “that the sensitivity of this information outweighs the presumption of access”); *Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (citation omitted) (concluding that proposed redactions were “generally limited to specific business information and strategies, which, if revealed, ‘may provide valuable insights into a company’s current business practices that a competitor would seek to exploit.’”).

For the reasons stated above, and those set forth in the Declaration of Lucky Vidmar, Microsoft respectfully requests that the NYT’s Motion for Leave to File Under Seal (ECF No.

227) be granted. Specifically, Microsoft requests that Exhibit 9 and any portion of any sentence that quotes or describes it in NYT's Letter Motion be sealed.

Dated: August 30, 2024

Respectfully submitted,

/s/ Jared B. Briant

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